

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

RONALD G DANDAR
VS PETITIONER
COMMONWEALTH OF
PENNSYLVANIA

NO. 02-222

TO HONORABLE JUDGE
SEAN McHAUGHLIN
- REQUEST FOR AN OPINION -
2254 HABEAS CORPUS

- OBJECTIONS -

- PETITION FOR WRIT OF ERROR CORAM NOBIS -
FORM ORDER DATED: 7-27-2005 -

- STATEMENT OF THE ISSUES -

1. PETITIONER AVERs THAT THE COURT HAS ADOPTED THE MAGISTRATES REPORT AND RECOMMENDATION 7-27-2005 AND DENIED CERTIFICATE OF APPEALABILITY.
2. THAT PETITIONER AVERs THAT HE HAS SHOWN SUBSTANTIAL SHOWING OF VIOLATIONS OF HIS CONSTITUTIONAL RIGHTS; RIGHTS PROMULGATED AS A QUALIFIED HANDICAPPED PERSON AND THE COURT IS MANDATED BY THE RULES 22(B) (1) AND 28 USC § 2253 (C) TO ISSUE PETITIONERS COA AND/OR STATES (VERBATIM) SPECIFIC ARTICULATED OF WHY THE COURTS IS DENING THE COA. SEE CASTRO V. UNITED STATES 310 F.3D 900 (6th Cir. 2002); FED RULES OF APP PROC. 22 (B)(1); U.S. V. OLANO 113 S.Ct 1770 1993.
2. THAT PETITIONER AVERs THAT HIS HABEAS CORPUS WAS PROPERLY FILED AND THE STATE COURTS AND FEDERAL COURTS RULING WAS CONTRARY TO OR INVOLVED INVOLVED AN UNREASONABLE APPLICATION OF FEDERAL LAW. WILLIAM V. TAYLOR 120 S.Ct 1495 (2000) GRANT ANY RELIEF. RESPECTFULLY SUBMITTED
7-30-2005 Ronald Dandar

7-30-2005

- OPINION RULING REQUESTED -

- PETITIONERS REQUEST TO CORRECT ERRONEOUS -
LOWER FEDERAL COURT RECORD AND GRANT
SAYO WRIT AND/OR GRANT C.O.A. -

- THAT DUE PROCESS MANDATES A CLEAR-PRECISE RECORD -

3. PETITIONER AVERS THAT HE IS SUBJECT TO
 EQUITABLE CONSIDERATION, DUE TO THE FACT THAT
 MAGISTRATES REPORT AND ADOPTION CLEARLY
 SHOWS AS STATED IN EXHIBIT 13 C:

" PAGE 5: THE LIMITATIONS BEGAN RUNNING
 ON THAT DATE AND FURTHER COLLATERAL PROCEEDINGS
 WERE INITIATED UNTIL MARCH 27 2000.

A) FURTHERMORE, EXHIBIT 14 C CLEARLY STA-
 TES: PAGE 6: THUS, IN REALITY, NO TOLLING
 OCCURED FROM MAY 1998 THROUGH JULY 23,
 2002. . . . SEE 28 USC § 2244 CD(2), SEE EXHIBIT-11C.

4. PETITIONER AVERS THAT THE FEDERAL COURTS
 OWN OFFICIAL RECORDS REFUTE THE ABOVE AS
 CLEARLY SHOWING THAT COLLATERAL PROCEEDINGS
 WERE INITIATED ON AND FILED 6-1-1999. EXH-11C
 SEE MILLER, 145 F3D. AT 617; JENKINS V. JOHNSON, 2005-
 330. F3D 1146 (CA 2003); RHINKS V. WEBER 12551152 B

5. THAT PETITIONER AVERS THAT HE IS NOT TIME-BARRED
 SINCE HE "PROPERLY FILED" BY DELIVERING TO THE PRISON
 OFFICIALS HIS PCRA § 2254 AND HE WAS IN COMPLIANCE
 WITH LAW AND RULINGS SEE US V. LOMBARD, 241 US 73
 76. (1916) SEE AR. TUZ V. BENNETT, 531 US AT 8 (2000).

6. THAT PETITIONER STATES THAT REPORT STATES OF AN ERRONEOUS
 SENTENCE- PCRA OF ANOTHER CASE, INTER ALIA, SEE MARTINEZ V.
 DRETKE III, 404 F.2D 224 - 2 - 5th Cir 2004. *Robert F. Clark*
7-30-2005

DATE: 7-30-2005

"PROOF OF SERVICE" - 02-222

I, Ron Pandar, BEING A CITIZEN OF THE UNITED STATES, HEREBY SERVES NOTICE THAT A TRUE AND CORRECT COPY OF THE FOREGOING HAS BEEN SERVED THIS 30th DAY OF July 2005 BY DEPOSITING THE SAME AT SCOT CRESSON 1ST CLASS FULL POSTAGE PAID ADDRESSED to: Objections Order dated: 7-27-2005 in

ADDRESSED to: Re: Castano

1. Office of the Clerk
United States District Court
17 South Park Row
Federal Court House
Erie, Penna 16501

Original &
Proof of Service

5.

2. Office of District Attorney
Raguel Cross Esq
148 West 6th
Erie County Court House
3 Erie, Penna 16501

RECEIVED SUBMITT
X BK Ron Pandar
Post Office Box A
Old Route 22 AP 6833
Cresson, PA

4

DATE: 7-30-2005

1689-0001
Pro se

MAG CLOSED

U.S. District Court
Western District of Pennsylvania (Erie)

CIVIL DOCKET FOR CASE #: 99-CV-185

Filed: 06/01/99

DANDAR v. BRENNAN, et al

Assigned to: Judge Sean J. McLaughlin

Referred to: Magistrate Judge Susan Paradise Baxter

Demand: \$0,000

Nature of Suit: 530

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

RONALD G. DANDAR
petitioner

RONALD G. DANDAR
AP 6933
[COR LD NTC] [PRO SE]
SCI Albion
10745 Route 18
Albion, PA 16475-0004

v.

EDWARD T. BRENNAN,
Superintendent
respondent

ATTORNEY GENERAL OF THE
COMMONWEALTH OF PENNSYLVANIA
respondent

OFFICE OF DISTRICT ATTORNEY OF
CRAWFORD COUNTY
respondent

EXHIBIT - 10C -
- 11C -

Proceedings include all events.
1:99cv185 DANDAR v. BRENNAN, et al

MAG
CLOSED

11/1/99 -- NOTICE of Docketing ROA from USCA Re: [14-1] appeal by
RONALD G. DANDAR USCA Number: 99-3880 (mad)

12/2/99 16 CERTIFIED COPY OF ORDER dated 11/30/99 from U.S. Court of
Appeals for the Third Circuit directing that the motion to
proceed ifp is granted. (mad) [Edit date 12/02/99]

12/2/99 17 CERTIFIED COPY OF ORDER dated 11/30/99 from U.S. Court of
Appeals for the Third Circuit directing that CA No. 99-3880
the motion to proceed ifp is granted. (mad)
[Edit date 12/02/99]

5/15/00 18 CERTIFIED COPY OF ORDER dated 5/11/00 from U.S. Court of
Appeals for the Third Circuit directing that this appeal is
dismissed for lack of jurisdiction because it is taken from
an order that is not final and not appealable. (nk)
[Entry date 05/16/00]

6/19/00 -- Record on Appeal returned from U.S. Court of Appeals:
[14-1] appeal (nk)

6/19/00 19 CERTIFIED COPY OF ORDER dated 6/13/00 from U.S. Court of
Appeals for the Third Circuit directing that Motion for
certificate appealability is denied, as more fully stated
in Order. (nk)

As stated above, section 2244(d)(2) provides that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." 28 U.S.C. §2244(d)(2)(emphasis supplied). State court collateral appeals occurring prior to April 24, 1996 are irrelevant, as the limitations period had not yet begun to run and, therefore, could not be tolled. The first collateral appeals filed after AEDPA's effective date were a Writ of Coram Nobis filed on May 30, 1997, and a Motion for Reconsideration of Sentence filed on July 31, 1997. Even assuming that each of these were "properly filed" state court collateral appeals, more than one year of countable time had already elapsed when they were commenced.

Further, the first of these two collateral proceedings was terminated within weeks and Dandar did not appeal. The second motion was denied, and the appeal from that denial concluded on May 12, 1998. The limitations period began running on that date, and no further collateral proceedings were initiated until March 27, 2000. Thus, another 25 ½ months of countable time elapsed between state court appeals.

Finally, the March 27, 2000 PCRA petition was dismissed by the state courts on the basis that it was not timely filed. In Artuz v. Bennett, 531 U.S. 4, 8 (2000), the Supreme Court defined the meaning of a "properly filed" collateral appeal for purposes of AEDPA's tolling provision. A pleading is "filed" "when it is delivered to, and accepted by, the appropriate court officer for placement in the official record." Id. The Court further clarified that a pleading is "properly filed" "when its delivery and acceptance are in compliance with the applicable laws and

rules governing filings." Id. Federal courts are bound by state court findings concerning whether collateral appeals have been properly filed. Merritt v. Blaine, 326 F.3d 157, 166 (3d Cir. 2003)("we hold that we are bound by the state court's finding that Merritt's second PCRA petition was untimely."). Here, the state courts held that Dandar's 2000 PCRA was untimely. This court is forced to find that Dandar's March, 2000 PCRA petition was not "properly filed" for purposes of AEDPA's tolling provision. Thus, in reality, no tolling occurred from May 1998 through July 23, 2002, when this petition was filed, making the instant petition grossly out of time.

Nothing in the record indicates that Dandar is entitled to take advantage of any of the exceptions to the one-year limitations period. Specifically, he has failed to show that his claims are based on a constitutional right newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; nor has he shown that his claims are based on a factual predicate that could not have been discovered through the exercise of due diligence. 28 U.S.C. §2254(d)(1)(C-D).

Finally, the one-year limitation in §2244(d) is a statute of limitations, not a jurisdictional bar, and may be equitably tolled. Miller v. New Jersey State Dept. of Corrections, 145 F.3d 616, 618 (3d Cir. 1998). "Equitable tolling is proper only when the principles of equity would make the rigid application of a limitation period unfair. Generally, this will occur when the petitioner has in some extraordinary way been prevented from asserting his or her rights. The petitioner must show that he or she exercised reasonable diligence in investigating and bringing the claims. Mere excusable neglect is not sufficient." Id. at 618-19 (internal citations, quotations, and punctuation omitted); Hizbullahankhamon, v. Walker, 255 F.3d 65, 75 (2d Cir. 2001) ("To